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No. 86-684

Supreme Court, U.S.  
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In The  
**Supreme Court of the United States**

October Term, 1987

— o —  
CALIFORNIA,

*Petitioner,*

v.

BILLY GREENWOOD and  
DYANNE VAN HOUTEN,

*Respondents.*

— o —  
**ON WRIT OF CERTIORARI TO THE COURT OF  
APPEAL OF THE STATE OF CALIFORNIA,  
FOURTH APPELLATE DISTRICT**

— o —  
**PETITIONER'S REPLY BRIEF**  
— o —

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## I.

### **WHETHER AN EXPECTATION OF PRIVACY IS A 'LEGITIMATE' EXPECTATION UNDER THE FOURTH AMENDMENT IS NOT DETERMINED BY REFERENCE TO INDEPENDENT STATE GROUNDS.**

Greenwood, contrary to his position below (J.A. 2-3), now argues that he had a legitimate expectation of privacy under the Fourth Amendment by virtue of "the impact of State law."

While a state may insist on a more demanding standard under its own constitution or statutes, it would not purport to be applying the Fourth Amendment when it invalidates a search. [*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 344 Ftn. 10; *Cooper v. California* (1967) 386 U.S. 58, 61].

Greenwood's view of determining the 'legitimacy' of an expectation of privacy is contrary not only to federal law (*Rakas v. Illinois*, 439 U.S. 128, 143, Ftn. 12), but to California law.

As stated in *People v. Crowson* (1983) 33 Cal.3d 623, 629 (190 Cal.Rptr. 165):

In the search and seizure context, the article I, section I "privacy" clause has never been held to establish a broader protection than that provided by the Fourth Amendment of the United States Constitution or article I section 13 of the California Constitution. "[T]he search and seizure and privacy protections [are] coextensive when applied to police surveillance in the criminal context." [Article I, section I, article I, section 13 and the Fourth Amendment] apply only where parties . . . have a 'reasonable expectation of privacy' . . .

Respondent's argument reduces this court's power to interpret the Fourth Amendment to determining what the law of any of the 50 states says it is.

Is the Fourth Amendment different in each state? Is it the highest standard any of the 50 states determines their independent documents impose?

Respondent's attempt to engraft independent state grounds onto a then dependent Fourth Amendment should be rejected.

## II.

### **ONE WHO PLACES DISCARDED TRASH IN AN AREA ACCESSIBLE TO THE GENERAL PUBLIC FOR COLLECTION ABANDONS ANY LEGITIMATE EXPECTATION OF PRIVACY IN SUCH TRASH.**

Van Houten argues that "contrary to petitioner's assertions, those courts which have sought to determine the legitimacy of a householder's expectation of privacy in trash containers are neither unanimous nor necessarily foolhardy." (RB 23).

What petitioner asserted, however, was: a) the federal circuit courts of appeal are unanimous (PB 11) which Van Houten concedes (RB 14); and b) the majority of state courts<sup>1</sup> have concluded that warrantless trash searches of garbage left out for collection are not violative of the Fourth Amendment (PB 13), hardly refuted by respondent's reference to Hawaii's independent state ground case or 'thoughtful dissents' in 5 state opinions (RB 21).

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<sup>1</sup> In addition to the state decisions cited in Petitioner's Brief, pp. 13-14 are added: *Commonwealth v. Chappee* (1986) 397 Mass. 508, 492 N.E.2d 719; and *Cooks v. State* (1985) (Okla.) 699 P.2d 653, cert. den. — U.S. —, 106 S.Ct. 268, 88 L.Ed.2d 275

Petitioner agrees with Van Houten that the overwhelming weight of authority which finds such searches lawful is not foolhardy.

Van Houten exaggerates in claiming that “thrice the California Supreme Court has examined the question and concluded that a householder has a legitimate expectation of privacy in trash left at curbside.” (RB 21).

*Edwards*, 71 C.2d 1096, involved a search, on site, by police of trash cans within a few feet of the back door of defendant’s residence (71 C.3d at 1099 and 1104). ‘*Krivda II*’ merely held, on remand, that when the case had been decided, the court had an independent state ground (8 Cal.3d 623).

Similarly inflated is respondent’s characterization of discarding garbage as “an individual’s decision to place his life’s possessions in a pail or bag for collection.” (RB 12).

Van Houten claims that ‘a number of state courts and federal circuits’ have erred by utilizing property law concepts such as abandonment. In support she cites, among other cases, *State v. Schultz* (Fla.) 388 So. 2d 1326, at 1330 (RB 10, ftnt 11)

That citation, however, is to the dissent. The majority opinion, which held the search lawful, states, at 1329:

... it is necessary to discuss abandonment, not in the sense of personal property concepts, but rather as it relates to an expectation of privacy.

The courts which have rejected the argument respondents advance haven’t focused on the garbage, but rather on what happens to an individual’s legitimate expectation

of privacy when he voluntarily places that garbage in an area accessible to the public for collection by a third party. (See 40 ALR 4th 381, *Search and Seizure: what constitutes abandonment of personal property within the rule that search and seizure of abandoned property is not unreasonable—modern cases.*)

As stated in *State v. Oquist* (1982 Minn.) 327 N.W.2d 587 at 589-590:

Accordingly, the constitutionality of the reconnaissance of garbage may no longer be tested merely by the application of traditional property law concepts of abandonment and trespass. We have, however, previously noted the distinction between abandonment in the property-law sense and abandonment in the constitutional sense. Under the law of property, the question is whether the owner has voluntarily, intentionally, and unconditionally relinquished his interest in the property so that another, having acquired possession, may successfully assert his superior interest. Under the law of search and seizure, however, the question is whether the defendant has, in discarding the property, relinquished his expectation of privacy with respect to the property so that neither search nor seizure is within the proscription of the fourth amendment. "In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein."

### III.

**THAT DISCARDED TRASH IS MOVABLE (AS IS ALL PERSONAL PROPERTY) IS NO REASON TO IMPOSE A PROBABLE CAUSE REQUIREMENT WHERE THERE IS NO LEGITIMATE EXPECTATION OF PRIVACY.**

Van Houten equates movable refuse to an automobile and claims a lesser expectation of privacy which requires probable cause, if not a search warrant.

That rationale was squarely rejected in *United States v. Chadwick*, 433 U.S. 1. [*United States v. Ross*, 456 U.S. 798, 809-810].

Where inspection by the police does not intrude upon a legitimate expectation of privacy, there is no "search" subject to the warrant clause. [*Illinois v. Andreas* (1983) 463 U.S. 765, 771]. For the same reason that no warrant is required, neither is probable cause. Discarded trash does not present an exception to the warrant requirement, rather a situation where the Fourth Amendment is not implicated.

Unlike the great variety of work environments in the public sector that called for a case by case analysis in *O'Connor v. Ortega*, 480 U.S. —, 94 L.Ed.2d 714, 723 (plurality opinion by Justice O'Connor), no such variety exists with regards to discarded trash placed outside the curtilage for collection or removed from the curtilage by the authorized collector. This court should establish a 'bright line rule'. (See *Oliver v. United States*, 466 U.S. 170, 181).

The brief of Amici Curiae of Americans for Effective Law Enforcement, Inc., et al., submits, and the dissent in *Rooney, supra*, seemed to conclude, this line should deny any reasonable expectation of privacy in trash placed for collection in an area accessible to the public. Although beyond the requirement of Petitioner's facts at bar, Petitioner concurs.

**CONCLUSION**

For the foregoing reasons and for those set forth in Petitioner's Brief filed upon the granting of Certiorari, it is respectfully submitted the judgment of the California Court of Appeal, Fourth Appellate District should be reversed.

Respectfully submitted,

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